

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 8 WEAPONS AND EXPLOSIVES
PART 2 CARRYING CONCEALED HANDGUNS

10.8.2.1 ISSUING AGENCY: Department of Public Safety.
[10.8.2.1 NMAC - N, 11-26-03]

10.8.2.2 SCOPE: This rule applies to all persons who wish to carry a concealed handgun or to become an approved instructor in New Mexico.
[10.8.2.2 NMAC - N, 11-26-03]

10.8.2.3 STATUTORY AUTHORITY: NMSA 1978 Section 29-19-12.
[10.8.2.3 NMAC - N, 11-26-03]

10.8.2.4 DURATION: Permanent.
[10.8.2.4 NMAC - N, 11-26-03]

10.8.2.5 EFFECTIVE DATE: November 26, 2003, unless a later date is cited at the end of a section.
[10.8.2.5 NMAC - N, 11-26-03]

10.8.2.6 OBJECTIVE: The purpose of this rule is to implement the Concealed Handgun Carry act by establishing requirements and procedures for issuing licenses to carry concealed handguns and approving instructors and firearms training courses.
[10.8.2.6 NMAC - N, 11-26-03]

10.8.2.7 DEFINITIONS: In addition to the definitions in NMSA 1978 Section 29-19-2, unless the context clearly indicates otherwise, as used in this rule:

- A. act** means the Concealed Handgun Carry Act, NMSA 1978 Sections 29-19-1 et seq.;
 - B. approved instructor** means a person to whom the department has issued a permit to provide all or any part of classroom and/or firing range instruction;
 - C. controlled substance** has the meaning given in the New Mexico Controlled Substances Act or a similar act of any other jurisdiction;
 - D. conviction**, when used in connection with a misdemeanor offense involving driving under the influence of intoxicating liquor or drugs, has the meaning given in NMSA 1978 Section 66-8-102;
 - E. court** means any federal, state, county, municipal, or tribal court;
 - F. instructor applicant** means a person seeking a permit as an approved instructor;
 - G. peace officer** has the meaning given in NMSA 1978 Section 30-1-12;
 - H. person** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any legal or commercial entity;
 - I. respondent** means, in the context of 10.8.2.26 NMAC, an applicant, instructor applicant, approved instructor, or licensee;
 - J. retired peace officer** means a New Mexico resident who has retired in good standing from any law enforcement agency with at least fifteen years as a certified police officer or by work related disability;
 - K. revocation or revoked** means the involuntary permanent termination of a license or permit by the department for cause;
 - L. secretary** means the secretary of the department of public safety or his designee;
 - M. suspended or suspension** means the involuntary termination of a license or permit by the department for cause for a specified period of time.
- [10.8.2.7 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.8 FILINGS AND CORRESPONDENCE:

- A. To the department.**
 - (1)** A person shall address all filings and correspondence **relating to hearings** held pursuant to this rule to the New Mexico Department of Public Safety, Post Office Box 1628, Santa Fe, New Mexico 87504-1628, Attention: Office of Legal Affairs-Concealed Handgun Section.

(2) A person shall address all filings and correspondence relating to licenses, instructor approval, and all other matters to the New Mexico Department of Public Safety, Concealed Handgun Licensing Unit, 6301 Indian School Road NE, Suite 310, Albuquerque, New Mexico 87110.

B. From the department. The department will send all legal notices and orders required by the act and this rule by certified mail to the last address reported to the department by an applicant, instructor applicant, licensee, or approved instructor; the department will send all other correspondence by regular mail. If a legal notice or order is returned to the department as undeliverable, the department may publish the legal notice or order once in a newspaper of general circulation in the state. The department may take the action proposed in the legal notice or order on the 31st day after the date legal notice is published.

[10.8.2.8 NMAC - N, 11-26-03]

10.8.2.9 INCOMPLETE FILINGS: The department may refuse to consider an incomplete filing. A filing will be considered incomplete if:

- A. it is unsigned;
- B. documents that are required to be certified or notarized are not certified or notarized;
- C. it omits any information required by law or department rule, form, or order;
- D. it is not filed on a department-prescribed form and a form exists for that purpose; or
- E. the required fee is not filed with the application or is not in the form prescribed in Subsection B of

10.8.2.11 NMAC.

[10.8.2.9 NMAC - N, 11-26-03]

10.8.2.10 DEPARTMENT-PRESCRIBED FORMS:

A. Use required. The department has prescribed forms to carry out certain requirements of this rule. The most current version of a department form must be used when a form exists for that purpose, unless the department waives this requirement.

B. How to obtain. Department-prescribed forms may be obtained:

- (1) at New Mexico state police offices throughout the state; or
- (2) from the department's website at www.dps.nm.org.

[10.8.2.10 NMAC - N, 11-26-03]

10.8.2.11 APPLICATION REQUIREMENTS FOR A LICENSE:

A. Filing. An applicant must file an application for a license with the department in person or by mail.

B. Fees. All fees required by the act or this rule to be paid to the department shall be in the form of a personal check, cashiers check, certified check, or money order made payable to the New Mexico Department of Public Safety. The department will not accept cash.

C. Completeness. All applications must be complete and legible.

(1) If an application is incomplete, the department will return the application and a letter outlining the deficiencies in the application to the applicant by regular mail. The applicant will have 45 calendar days from the date the letter is postmarked to cure the deficiencies. If the applicant fails to return the application to the department within 45 calendar days from the date the letter was postmarked, the application will be deemed abandoned, the application file will be closed, and all fees paid will be forfeited to the state. The department will send a letter notifying the applicant that the application has been deemed abandoned, the file has been closed, and all fees paid have been forfeited to the state.

(2) If the applicant returns the application to the department within 45 calendar days from the date the initial letter was postmarked but the application is still deficient, the department will return the application and a second letter outlining the deficiencies in the application to the applicant by regular mail. The applicant will have 30 calendar days from the date the second letter is postmarked to cure the deficiencies. If the applicant fails to return the application to the department within 30 calendar days from the date the second letter was postmarked, or returns the application but it is still deficient, the application will be deemed abandoned, the application file will be closed, and all fees paid will be forfeited to the state. The department will send a letter notifying the applicant that the application has been deemed abandoned, the file has been closed, and all fees paid have been forfeited to the state.

(3) An applicant may contact the concealed carry unit by telephone to inquire on the status of their application. Agents may provide the information to the applicant after the applicant has supplied sufficient

identifiers such as address, social security number, DOB, etc.
[10.8.2.11 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.12 OTHER REQUIRED DOCUMENTS FOR A LICENSE: In addition to the application form, each applicant shall file copies of other documents required by the act or this rule with the department. The copies must clearly show the name of the applicant and all signatures and pertinent information. The department will not accept copies that are too dark, too light, blurry, or otherwise unreadable. An applicant may request the return of original documents by stating so and enclosing a self addressed stamped envelope.

A. Proof of citizenship. In accordance with Paragraph 6 of Subsection B of NMSA 1978 Section 29-19-5, an applicant may prove United States citizenship by filing a certified copy of a birth certificate or proof of United States citizenship, if the applicant was not born in the United States.

B. Proof of residency.

(1) An applicant may prove residency in New Mexico by filing a copy of a valid New Mexico driver's license or personal identification card issued by the motor vehicle division of the taxation and revenue department and one of the following:

- (a) proof that the applicant is registered to vote in New Mexico;
- (b) a New Mexico income tax return filed within the last year;
- (c) a United States armed forces identification card and orders of permanent duty station in New Mexico; or
- (d) other proof acceptable to the department.

(2) Possession by an applicant of a driver's license issued by another state shall create a rebuttable presumption of residency in such other state.

C. Proof of age. An applicant may prove that he or she is 21 or more years of age by filing:

- (1) a copy of a valid government-issued identification card stating the person's age, and
- (2) a certified copy of his or her birth certificate.

D. Proof of handgun competency. Pursuant to Paragraph (4) of Subsection B of NMSA 1978 Section 29-19-5, an applicant shall prove that he or she can competently and safely fire a handgun by filing a certified copy of a certificate of completion for a firearms training course approved by the department issued by an approved instructor not more than 90 calendar days prior to the date the application is filed.

(1) Current certified law enforcement officers employed by a law enforcement agency and residing in New Mexico are not required to attend a civilian firearms training course.

(2) Law enforcement officers who are residents of New Mexico and have retired in good standing within the previous ten years prior to applying for a license are not required to attend a firearms training course.

(3) Law enforcement officers who have been retired longer than ten years at time of application are required to attend a firearms course pursuant to the act.

(4) A department approved concealed handgun carry instructor shall indicate on the application the category and highest caliber they wish to carry.

E. Photographs. To streamline the application process, the department may obtain digital color photographs of an applicant from the motor vehicle division of the taxation and revenue department or another government agency. If the department requests an applicant to provide photographs pursuant to Paragraph (5) of Subsection B of NMSA 1978 Section 29-19-5, the photographs shall be in color, be a minimum of 3 inches by 3 inches, and be a full frontal view of the applicant without a hat, sunglasses, or any other item that would obstruct or alter the features of the applicant. The department will not accept photographs that are too dark, too bright, fuzzy, out of focus, or unclear.

F. Fingerprints. All applicants shall submit 2 full sets of fingerprints that comply with the requirements in NMSA 1978 Section 29-19-5 and 10.8.2.14 NMAC.

G. Application fee. An applicant shall submit a non-refundable application fee of \$100.00. Current and retired law enforcement officers are exempt from this fee.

[10.8.2.12 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.13 LICENSE APPLICATION REVIEW AND ISSUANCE:

A. Time period for review. In accordance with Subsection A of NMSA 1978 Section 29-19-6, the department shall review the application, conduct a national criminal background check of each applicant, and make a determination within 30 days of the date the department receives a complete application and background check.

B. Determination by department.

(1) **Approval.** If the department finds that the applicant meets the requirements in the act and this rule for issuance of a license, the department shall issue a license.

(2) **Denial.** If the department finds that the applicant does not meet the requirements for issuance of a license, the department shall issue an order of denial in accordance with 10.8.2.26 NMAC. The order of denial shall cite the particular requirements of the act or this rule that the applicant has failed to meet.

C. Information on license. In addition to the information required by Subsection C of NMSA 1978 Section 29-19-6, a license to carry a concealed handgun may include:

- (1) a physical description of the licensee, including his or her race or national origin, sex, hair color, eye color, height, and weight;
- (2) the state seal;
- (3) instructions to the licensee; and
- (4) other information as determined by the department.

D. Effective date and term of license. Original and renewed licenses are effective for four years from the date of issuance by the department. Replacement licenses and licenses that have been endorsed to add another category or highest caliber of handgun shall expire on the date the replaced license would have expired.

E. Dual licenses prohibited. A licensee may not own or possess more than one New Mexico license to carry a concealed handgun. A license to carry a concealed handgun shall indicate all categories and highest calibers of handguns the licensee is authorized to carry concealed in New Mexico.
[10.8.2.13 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.14 FINGERPRINTING OF APPLICANTS: In accordance with Paragraph (3) of Subsection B of NMSA 1978 Section 29-19-5, all applicants shall submit two full sets of fingerprints. The department may refuse to accept fingerprints it determines are not legible and classifiable.

A. Responsibilities of applicant. The applicant must present the following documents to the person recording his or her fingerprints:

- (1) a valid government-issued photographic identification card; and
- (2) the two blank fingerprint cards and instruction page supplied by the department.

B. Responsibilities of person recording the fingerprints. The person who records the applicant's fingerprints shall:

- (1) verify that the government-issued photographic identification card is of the person being fingerprinted;
- (2) either complete or verify the accuracy of the non-fingerprint data being filed on the card;
- (3) record the applicant's fingerprints on the card, in a manner consistent with that normally required for an arrest fingerprint card, including the simultaneous impressions;
- (4) obtain the signature of the applicant on both fingerprint cards;
- (5) sign the fingerprint card; and
- (6) return all documents to the applicant who shall forward them to the department.

[10.8.2.14 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.15 FIREARMS TRAINING FOR APPLICANTS AND LICENSEES:

A. Department approved firearms training course.

(1) An applicant seeking a license shall satisfactorily complete an initial firearms training course approved by the department that includes at least 15 hours of classroom and firing range instruction on the subjects specified in Subsection A of NMSA 1978 Section 29-19-7 except:

- (a) a department approved instructor; or
- (b) a current law enforcement officer; or
- (c) a retired law enforcement officer who has been retired 10 years or less at time of application; and

(d) a retired law enforcement officer who has been retired longer than 10 years is required to attend a firearms training course as per the act.

(2) A licensee shall complete a two (2) hour refresher course two years after the issuance of an initial or renewed license which shall be range qualification of their approved caliber of handgun and the instructor shall notify the department within thirty (30) days on a form prescribed by the department.

(3) A licensee seeking renewal of a license shall satisfactorily complete a refresher firearms training

course approved by the department that includes at least 4 hours of classroom and firing range instruction on the subjects specified in Subsection A of NMSA 1978 Section 29-19-7.

(4) The department may suspend a license if the licensee does not comply with the refresher requirements. Upon complying, the licensee shall submit a \$5.00 reinstatement fee.

B. Competency demonstration.

(1) An applicant or licensee shall demonstrate competency in the safe use of each category and highest caliber of handgun for which he or she seeks certification by firing the handgun with live ammunition at a target no larger than 12 inches wide and 18 inches high.

(2) An applicant or licensee shall fire 15 rounds from three yards and 10 rounds from seven yards.

(3) An applicant or licensee shall score 4 points for each shot that hits within the scoring line and zero points for each shot that hits outside the scoring line. An applicant must obtain a score of 72% to pass the competency demonstration.

C. Determination of competency. An approved instructor shall determine whether or not to issue a certificate of completion based on the applicant or licensee's score on the competency demonstration and the applicant or licensee's knowledge and understanding of the subjects specified in Subsection A of NMSA 1978 Section 29-19-7.

D. Certificates of completion. An approved instructor shall issue a certificate of completion to each applicant who demonstrates competency in the safe use of the categories and calibers of handguns for which he or she seeks licensure as prescribed in Subsections B and C of this section. The certificate of completion shall include the name and date of birth of the applicant, the printed name and signature of the approved instructor who scored the competency demonstration, the date the applicant completed the firearms training course, all categories and calibers of handguns for which the applicant demonstrated competency, and a unique number consisting of the instructor number assigned by the department and a sequential number.

[10.8.2.15 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.16 TERMS AND CONDITIONS OF LICENSE:

A. Carrying only handguns listed on license. No person shall carry a concealed handgun of a different category or higher caliber than is indicated on the license issued to that person by the department. A licensee shall only carry one (1) concealed handgun at any given time.

B. Carrying while impaired. Pursuant to NMSA 1978 Section 30-7-4, no person shall carry a concealed handgun while impaired by the use of alcohol, controlled substances, or over-the-counter or prescribed medications.

C. Display of license on demand. A licensee carrying a concealed handgun on or about his person in public shall, upon demand by a peace officer, display his license to carry a concealed handgun.

D. Prohibited acts. A licensee shall not deface, alter, mutilate, reproduce, lend, transfer, or sell a license. A licensee shall adhere to NMSA 1978 Section 30-7-4 as it pertains to negligent use of a deadly weapon.

E. Carrying prohibited on private property. In addition to other limitations stated in the act, a licensee may not carry a concealed handgun on or about his person on private property that has signs posted prohibiting the carrying of concealed weapons or when verbally told so by a person lawfully in possession of the property.

F. Carrying prohibited in preschools. As used in Subsection C of NMSA 1978 Section 29-19-8, preschool means a child care facility, whether home-based or center-based, whether or not the facility is licensed, registered, or regulated, that provides care to infants, toddlers, and children aged 5 and younger.

G. Indicia of licensure. No person who is not a law enforcement officer, may carry a badge, patch, card, or any other indication of authority to carry a concealed handgun in New Mexico other than the license issued by the department or a license issued by a state that has been accepted by transfer, recognition or reciprocity by New Mexico pursuant to the act.

H. Notice of change in circumstances. A licensee shall, within 10 calendar days, notify the department in writing of any of the following:

- (1) adjudication of mental incompetence;
- (2) commitment to a facility for the treatment of mental illness;
- (3) commitment to a facility for treatment of addiction to alcohol, controlled substances, or other drugs;
- (4) issuance of an order of protection by a court; [☐]
- (5) indictment for or charge with a felony or one of the misdemeanor offenses described in

Subsection B of NMSA 1978 Section 29-19-4;

- (6) is no longer a full time salaried law enforcement officer; and
- (7) is required to turn in the license within 10 calendar days of the change.

[10.8.2.16 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.17 LICENSE RENEWAL AND TRANSFER:

A. To renew a New Mexico license. A licensee may file an application for a renewed license on the form prescribed by the department.

(1) The licensee may file the application anytime from 60 calendar days before the license expires until 60 calendar days after the license expires. If the license has expired, a licensee shall not carry a concealed handgun until he receives his renewed license.

(2) The licensee shall complete a refresher firearms training course prior to filing the application.

(3) The licensee shall file with the department:

(a) 2 full sets of fingerprints as required by NMSA 1978 Section 29-19-5 and 10.8.2.14 NMAC;

(b) a certified copy of a certificate of completion for a refresher firearms training course approved by the department issued by an approved instructor not more than 90 days prior to the date the application is filed; and

(c) a nonrefundable \$75.00 renewal fee;

(d) a copy of New Mexico drivers license or other government issued identification which contains a picture.

B. To transfer a license from another state. A person seeking to transfer a license from another state may file an application for a New Mexico renewed license on the form prescribed by the department. An applicant for transfer shall not carry a concealed handgun in New Mexico until the applicant receives a New Mexico license unless they have a license from a state that has been accepted by transfer, recognition or reciprocity by New Mexico.

(1) In addition to the filings required by Paragraph 3 of Subsection A of this section, the applicant for transfer shall file:

(a) proof of citizenship as provided in Subsection A of 10.8.2.12 NMAC;

(b) proof of residency as provided in Subsection B of 10.8.2.12 NMAC;

(c) proof of age as provided in Subsection C of 10.8.2.12 NMAC; and

(d) a photocopy of the license being transferred.

(2) The applicant for transfer shall complete:

(a) a refresher firearms training course if the firearms training required by the other state meets or exceeds New Mexico firearms training requirements and the licensee completed firearms training not more than 1 year prior to filing the application; or

(b) an initial firearms training course if the firearms training required by the other state does not meet New Mexico firearms training requirements or the licensee completed firearms training more than 1 year prior to filing the application.

(3) The applicant for transfer must meet all other requirements for obtaining a license in New Mexico by showing either that:

(a) the requirements for licensure in the other state meet or exceed the requirements for issuance of a license in New Mexico; or

(b) the applicant has satisfactorily completed the requirements for issuance of a license in New Mexico that were not applicable in the other state.

C. Time period for review. As prescribed in Subsection A of NMSA 1978 Section 29-19-6, the department shall review the application for a renewed license, conduct a national criminal background check of each applicant for a renewed license or transfer of a license from another state, and make a determination within 30 days of the date the department receives a complete application and background check.

D. Determination by department.

(1) **Approval.** If the department finds that the applicant for a renewed license or transfer of a license from another state meets the requirements in the act and this rule for a renewed license, the department shall issue a license.

(2) **Denial.** If the department finds that the applicant does not meet the requirements for a renewed

license or transfer of a license from another state, the department shall issue an order of denial in accordance with 10.8.2.26 NMAC. The order of denial shall cite the particular requirements of the act or this rule that the applicant has failed to meet.

[10.8.2.17 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.18 ADDITIONAL HANDGUN ENDORSEMENT: If a licensee wishes to add another category or additional higher calibers of handguns to his license, the licensee shall file with the department an application for a renewed license. The licensee shall also submit a certified copy of a certificate of completion from an approved instructor stating that the licensee has demonstrated competency on a firing range for each additional category and caliber of handgun, his current license, and a \$5.00 processing fee. The licensee need not retake the classroom portion of the firearms training course. The department shall issue a renewed license within 10 days of receipt of the application. The renewed license shall expire on the same date as the original license would have expired. In accordance with NMSA 1978 Section 29-19-9, a licensee shall not carry a concealed handgun until he receives the renewed license.

[10.8.2.18 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.19 REPLACEMENT LICENSE:

A. Change of name address, or status;

(1) A licensee who changes his or her name, address or law enforcement status shall file within 30 days:

- (a) an application for a replacement license on the form prescribed by the department;
- (b) if applicable, a certified copy of a legal document proving the change of name; and
- (c) a nonrefundable \$5.00 processing fee; and
- (d) if applicable, proof of reemployment with a law enforcement agency.

(2) The department will issue a replacement license within 10 days of receipt of the application.

B. Loss, theft, or destruction of license: A licensee who loses his license or whose license is stolen or destroyed shall file a police report within 10 working days of the date the licensee discovers the loss, theft, or destruction of the license. The licensee shall not carry a concealed handgun until he obtains a replacement license. A licensee who seeks to replace a license that is lost, stolen, or destroyed shall file with the department:

- (1) an application for a replacement license on the form prescribed by the department;
- (2) the case number of the police report;
- (3) a notarized statement made under oath that the license was lost, stolen or destroyed; and
- (4) a nonrefundable \$5.00 processing fee.

[10.8.2.19 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.20 ENFORCEMENT:

A. Authority to disarm. A peace officer acting in the lawful discharge of his official duties is authorized to disarm a licensee at any time the peace officer has probable cause to believe it is necessary for the protection of the licensee, peace officer or other individual. The peace officer shall return the handgun to the licensee before dismissing the licensee from the scene when the peace officer has determined that the licensee is not a threat to himself, the peace officer, or other individuals, provided that the licensee has not violated any provision of the act or this rule, or committed any other violation which could result in arrest of the licensee. If the peace officer has probable cause to believe that the handgun is stolen, has an altered serial number, or has been used in the commission of a crime, the peace officer shall hold the handgun in evidence and shall submit a copy of his or her agency report to the department within 10 working days.

B. Authority to confiscate license. A peace officer may confiscate a license if the licensee has violated any provision of the act or this rule, or committed any other violation that could result in arrest of the licensee. If the licensee has committed a violation of the act or rule warranting suspension or revocation of the license, the officer shall file an affidavit of violation as provided in Subsection B of 10.8.2.21 NMAC.

[10.8.2.20 NMAC - N, 11-26-03]

10.8.2.21 SUSPENSION AND REVOCATION OF A LICENSE:

A. Grounds. The department may suspend or revoke a license if the licensee:

- (1) is found to have violated any provision of the act or this rule;
- (2) is a fugitive from justice, in accordance with Paragraph (4) of Subsection A of NMSA 1978

Section 29-19-4;

(3) is convicted of a felony, in accordance with Paragraph (5) of Subsection A of NMSA 1978

Section 29-19-4;

(4) is under indictment for a felony criminal offense, in accordance with Paragraph (6) of Subsection A of NMSA 1978 Section 29-19-4;

(5) is prohibited by law from purchasing or possessing a firearm, in accordance with Paragraph (7) of Subsection A of NMSA 1978 Section 29-19-4;

(6) is adjudicated mentally incompetent or committed to a mental institution, in accordance with Paragraph (8) of Subsection A of NMSA 1978 Section 29-19-4;

(7) is addicted to alcohol or controlled substances, in accordance with Paragraph (9) of Subsection A of NMSA 1978 Section 29-19-4;

(8) receives a conditional discharge, a diversion or a deferment or is convicted of, pleads guilty to or enters a plea of nolo contendere to a misdemeanor offense involving a crime of violence within ten years immediately preceding the application, in accordance with Paragraph (1) of Subsection B of NMSA 1978 Section 29-19-4;

(9) is convicted of a misdemeanor offense involving driving while under the influence of intoxicating liquor or drugs, in accordance with Paragraph (2) of Subsection B of NMSA 1978 Section 29-19-4;

(10) is convicted of a misdemeanor offense involving the possession or abuse of a controlled substance within ten years immediately preceding the application, in accordance with Paragraph (3) of Subsection B of NMSA 1978 Section 29-19-4;

(11) is convicted of a misdemeanor offense involving assault, battery or battery against a household member, in accordance with Paragraph (4) of Subsection B of NMSA 1978 Section 29-19-4; or

(12) is subject to a valid protective order issued by a court.

B. Affidavit of violation by a licensee. If a peace officer believes there is probable cause to suspend or revoke a license, the peace officer shall prepare an affidavit on a form prescribed by the department. The affidavit shall cite the provision of law that was violated. The peace officer shall file the affidavit and any other reports or information relating to the licensee available to the officer with the department within 10 working days of the date the peace officer learns of the violation.

C. Notice of suspension or revocation and surrender of license. The department shall review the affidavit and attachments, and, if the department finds probable cause to suspend or revoke the license, may issue an order of suspension or revocation to the licensee advising the licensee of his right to a hearing in accordance with 10.8.2.26 NMAC. If the licensee elects not to request a hearing, the licensee shall surrender his license to the department within 15 calendar days of the expiration of the period for requesting a hearing.

D. Term of suspension or revocation and reapplication.

(1) The department may suspend a license for up to one year. The licensee may file an application to renew the license upon expiration of the term of suspension.

(2) The department may revoke a license. The person whose license was revoked may file an application for another license no earlier than one year from the date the license was revoked.

(3) The license of a current law enforcement officer shall expire on the date the officer leaves employment unless the officer has been hired by another law enforcement agency in New Mexico with written proof provided by the licensee.

[10.8.2.21 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.22 DEPARTMENT APPROVAL OF INSTRUCTORS AND FIREARMS TRAINING COURSES:

A. Application required. Any person seeking to instruct firearms training courses pursuant to this rule shall file an application with the department to become an approved instructor. Application shall be made on the form prescribed by the department, and shall be typewritten or legibly handwritten in ink. A person who is not an approved instructor may not instruct a firearms training course pursuant to this rule.

B. Requirements for approval. In order to be approved as an instructor, an instructor applicant must:

(1) agree to be subject to New Mexico jurisdiction for the limited purpose of enforcing the act and this rule;

(2) submit 2 full sets of fingerprints that comply with the requirements in NMSA 1978 Section 29-19-5 and 10.8.2.14 NMAC for positive identification purposes;

- (3) submit an authorization for release of information form provided by the department;
- (4) submit to the department the curriculum and course materials for a firearms training course that has been certified or sponsored by a federal or state law enforcement agency, a college, a firearms training school, or a nationally recognized organization, approved by the department, that customarily offers firearms training and a copy of the letter or other document approving the course from the certifying or sponsoring entity; an instructor applicant may develop his own curriculum and materials but must have them certified or sponsored by one of the entities identified in Subsection A of NMSA 1978 Section 29-19-7;
- (5) provide a description of the instructor applicant's experience in offering firearms training; an instructor-applicant who wishes to conduct firing range instruction must possess a certificate of completion of a firearms instructor-training program approved by the department that was issued or renewed not more than 5 years prior to the date the application is filed;
- (6) submit a list of all persons the instructor applicant proposes to engage as instructors and the subject each will be engaged to teach;
- (7) agree to be responsible for the actions and omissions of all persons engaged by the approved instructor for the purpose of conducting firearms training courses pursuant to this rule; or
- (8) be a currently certified law enforcement instructor employed by a law enforcement agency.

C. Time period for review. As prescribed in Subsection A of NMSA 1978 Section 29-19-6, the department shall review the application of each instructor applicant and make a determination within 30 days of the date the department receives a complete application and background check.

D. Determination by the department.

(1) Approval.

(a) Instructor. If the department finds that the instructor applicant meets the requirements specified in Subsection B of this section, the department shall issue a permit that shall be valid for 4 years. The permit shall include the approved instructor's name, business address, and date of birth, the expiration date of the permit, and the instructor number assigned by the department.

(b) Curriculum. If the department finds that the proposed curriculum and course materials for the firearms training course meet the requirements of NMSA 1978 Section 29-19-7 and this rule, the department shall approve the proposed firearms training course in writing. The department's approval shall remain in effect for the shortest of:

- (i) one year;
- (ii) until the approved instructor significantly changes the curriculum or course materials; **or**
- (iii) the requirements in the act or this rule are changed.

(2) Denial. If the department finds either that the instructor applicant or the proposed firearms training course do not meet the requirements of NMSA 1978 Section 29-19-7 or this rule, the department shall issue an order of denial in accordance with 10.8.2.26 NMAC. The order of denial shall cite the particular requirements of the act or this rule that the instructor applicant or proposed firearm training course has failed to meet.

E. Renewal. An approved instructor seeking to renew his permit shall file with the department at least 60 calendar days before the date his permit expires:

- (1) an application for renewal on the form prescribed by the department;
- (2) the curriculum and course materials for a firearms training course that is certified or sponsored by a federal or state law enforcement agency, a college, a firearms training school, or a nationally recognized organization, approved by the department, that customarily offers firearms training and a copy of the letter or other document approving the course from the certifying or sponsoring entity; and
- (3) a list of all persons the instructor applicant proposes to engage as instructors and the subject each will be engaged to teach.

F. No authority to carry. An approved instructor is not authorized to carry a concealed handgun unless the approved instructor obtains a license from the department pursuant to 29-19-4 of the act and this rule. If an instructor applicant wishes to apply for a license at the same time he applies for a permit, he may do so by checking the appropriate boxes on the instructor application form, complying with all requirements for a license in the act and this rule, and enclosing the license application fee and all documents required by 10.8.2.12 NMAC with the application for a permit.

G. List of approved instructors. The department shall maintain and make available to the public a list of approved instructors. An approved instructor may request to be removed from the list, but shall remain subject to a request for inspection of public records pursuant to NMSA 1978, Chapter 14, Article, 2.

10.8.2.23 BACKGROUND INVESTIGATIONS OF APPLICANTS AND INSTRUCTOR

APPLICANTS:

A. Central office. The department shall conduct a state and national criminal background check, and a court records check for protective orders, of each applicant for an original, transferred or renewed license. The department shall conduct a state criminal background check, and a court records check for protective orders, of each instructor applicant for an original or renewed permit. The department may require certain applicants to provide information or execute documents to enable the department to obtain criminal history records of disposition of charges. The department may conduct such other investigation of an applicant as the department deems necessary to determine an applicant's suitability for a license or permit.

B. In the field. The department may assign an agent or police officer to conduct a field background investigation of an applicant or instructor applicant. Upon completion of the investigation, the agent or police officer shall prepare a report of the results of the investigation.

[10.8.2.23 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.24 RESPONSIBILITIES OF APPROVED INSTRUCTORS:

A. Minimum standards for instruction. An approved instructor shall:

- (1) engage as instructors only those persons who have been issued a permit by the department, except as provided in Subsection C of this section;
- (2) have no more students in the classroom or on an indoor firing range than the maximum occupancy allowed by the state or local fire code;
- (3) use classroom facilities that comply with all federal, state, and local laws relating to persons with disabilities, public health, safety, and sanitation, including restroom facilities;
- (4) use only the curriculum, course materials, handouts, and videos approved by the department;
- (5) display the permit issued by the department in an appropriate and visible location;
- (6) not permit a student to begin a firearms training course until the student has received written information stating all fees, including incidental costs, charged for the course, policies for passing and failing, refund and reschedule policies, and attendance requirements.

B. Minimum standards for firing range instruction. An approved instructor shall:

- (1) not permit a student to participate in firing range instruction until the student has completed the classroom portion of the firearms training course;
- (2) conduct firing range instruction under various light conditions when possible;
- (3) have no more students firing a handgun on the firing range than the instructor can effectively and safely instruct and monitor.

C. Guest instructors.

(1) An approved instructor may use guest instructors who are not approved instructors to teach various parts of a firearms training course, but only with the prior written approval of the department. An approved instructor must file a request for approval to use a guest instructor at least 30 days prior to the date the guest instructor will teach for the first time. The department will not conduct background investigations of guest instructors.

(2) A guest instructor may teach a maximum of 3 times in a calendar year. No guest instructor may teach all of a firearms training course. Any person wishing to instruct firearms training courses more than 3 times in a calendar year must apply for and obtain a permit from the department.

(3) An approved instructor shall maintain a file on each guest instructor who teaches a portion of the firearms training course. The file shall include a list of the dates and portions of the course each guest instructor has taught, and appropriate documents showing the education, experience, licenses or certifications that qualify the guest instructor to teach the portions of the course he has taught.

D. Monitoring by the department. The department may monitor all aspects of firearms training courses. Approved instructors shall cooperate with agents of the department in its efforts to monitor the training of applicants.

(1) Should a department agent determine that an instructor is not following the act or these rules or is placing their students in danger, the agent shall have the authority to end the class. The agent shall obtain the instructor's permit, make a written report and submit both to the secretary. The instructor may then file an appeal pursuant to the act and these rules.

(2) The agents of the department are certified law enforcement officers and required by the department to be armed while on duty. No instructor has the authority to require the agents to be disarmed while they are performing their duties.

(3) Failure to adhere to any provisions of Subsection D, these rules or the act will be grounds for temporary or permanent loss of their instructors permit.

E. Reports. An approved instructor shall file the following information with the department within 5 working days after the end of each firearms training course on the form prescribed by the department:

- (1) the name, address, and date of birth of each applicant who attended the course;
- (2) for each applicant, the score the applicant achieved in the handgun competency demonstration;
- (3) for each applicant, the category and highest caliber of each handgun for which the applicant demonstrated competency; and
- (4) for each applicant, whether or not the approved instructor issued a certificate of completion and each category and caliber for which the certificate was issued.

F. Records. An approved instructor shall maintain the records required by this subsection for a period of three years from the date of completion of each firearms training course. The records shall be stored in a safe and secure place and shall be available for inspection by the department upon request. An approved instructor shall maintain:

- (1) a record of each handgun competency certificate issued;
- (2) a record of the following information for each course:
 - (a) name, address, and date of birth of each applicant who attended the course;
 - (b) for each applicant, the score the applicant achieved in the handgun competency demonstration;
 - (c) for each applicant, the category and caliber, of each handgun for which the applicant demonstrated competency; and
 - (d) an indication of whether or not the approved instructor issued a certificate of completion to that applicant;
- (3) a record of the dates and number of hours of each firearms training course;
- (4) a record of the curriculum and course materials used in each course; and
- (5) copies of documents and correspondence filed with the department.

[10.8.2.24 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.25 SUSPENSION AND REVOCATION OF AN INSTRUCTOR PERMIT:

A. Grounds. The department may suspend or revoke a permit if:

- (1) the approved instructor is the subject of valid complaints from applicants, licensees, or other approved instructors; or
- (2) for any of the grounds stated in Subsection A of 10.8.2.21 NMAC with respect to a license; or
- (3) for violation of any provision of the act or these rules.

B. Notice of suspension or revocation and surrender of permit. The department shall investigate all allegations concerning grounds for suspension or revocations of permits. If the department finds probable cause to suspend or revoke the permit, the department may issue an order of suspension or revocation to the approved instructor advising the approved instructor of his right to a hearing in accordance with 10.8.2.26 NMAC. If the approved instructor elects not to request a hearing, the approved instructor shall surrender his permit to the department within 15 calendar days of the expiration of the period for requesting a hearing and shall cease offering firearms training courses pursuant to this rule.

C. Immediate suspension of firearms training course and refund of tuition.

- (1) The department may immediately suspend, without notice or a prior hearing, a firearms training course whenever the department finds that the person teaching the course:
 - (a) is not an approved instructor;
 - (b) is impaired by the use of alcohol, controlled substances, or over-the-counter or prescribed medications; or
 - (c) is teaching something that is contrary to law or accepted safety practices.
- (2) The approved instructor shall be given the opportunity to request a hearing before the department pursuant to 10.8.2.26 NMAC.
- (3) If the department finds, after notice and a public hearing, that the person teaching the course was

not an approved instructor, was impaired, or was teaching something contrary to law or accepted safety practices, the department may order the person to refund to every student in the class the person was teaching any fees paid by the student to take the class. If the department finds that all or any portion of the firearms training course was deficient because the instructor was not an approved instructor, was impaired, or was teaching something contrary to law or safety, the department may require the students in that class to retake the portions that were deficient. The department may also initiate proceedings to suspend or revoke the approved instructor's permit.

D. Term of suspension or revocation and reapplication.

(1) The department may suspend a permit for up to one year. The approved instructor may file an application to renew the permit upon expiration of the term of suspension.

(2) The department may revoke a permit. The instructor whose permit was revoked may file an application for a new permit no earlier than one year from the date the permit was revoked.

[10.8.2.25 NMAC - N, 11-26-03; A, 11-30-05]

10.8.2.26 HEARING PROCEDURES:

A. Written notice required. The department shall mail an order of denial, suspension, or revocation and instructions for requesting a hearing to the respondent in accordance with Subsection B of 10.8.2.8 NMAC. The order shall become final on the 35th day after the date the notice was postmarked unless the department receives a request for a hearing, or the notice is returned to the department as undeliverable, before that date.

B. Request for hearing. A respondent who seeks reconsideration of an order of denial, suspension, or revocation shall file a request for hearing. The request for hearing shall:

- (1) be in writing;
- (2) be received by the department within 35 days of the date the notice is postmarked;
- (3) state with specificity the basis for challenging the order; and
- (4) provide any additional documentation to support the challenge.

C. Hearing date. Within 30 days of receipt of a request for hearing, the department will mail a notice of hearing to the respondent. The hearing shall be held within a reasonable period of time, but in no case sooner than 20 days after the notice is postmarked or later than 90 days from the date the department receives the request for hearing. The department may extend the time for a hearing one time for up to an additional 60 days. The department shall not unreasonably deny a request for postponement of the hearing made by a respondent.

D. Contents of notice. The notice shall include:

- (1) the date, time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction pursuant to which the hearing is being held;
- (3) reference to the particular sections of the act or this rule that were cited as the basis for the denial, suspension, or revocation;
- (4) a statement of the matters or issues involved; and
- (5) a statement of the rights specified in Subsection I of this section.

E. Nature of hearing. The hearing shall be conducted in an informal manner. The hearing may be conducted in person or by telephone conference call, video conferencing, or other appropriate technology at the department's expense.

F. Hearing examiner. The department shall designate a hearing examiner who shall regulate the proceedings and perform all acts and take all measures necessary or proper for the efficient conduct of the hearing. The hearing examiner may:

- (1) administer oaths;
- (2) issue subpoenas for the attendance of witnesses and the production of relevant books, documents, and records;
- (3) exclude any irrelevant, immaterial, or unduly repetitious evidence;
- (4) take notice of judicially cognizable facts and of recognized technical or scientific facts within the departments specialized knowledge;
- (5) hear evidence from the respondent and the department; the department may introduce into evidence copies of government records needed to establish the existence of certain facts which could result in denial, suspension, or revocation of a license or permit, including but not limited to records regarding convictions, judgments regarding mental competency or chemical dependency, or other matters that may be established by government records;
- (6) call and examine the respondent or other witnesses; and
- (7) utilize the department's experience, technical competence, and specialized knowledge in

evaluating the evidence.

G. Testimony. Testimony at the hearing shall be taken under oath.

H. Record of hearing. The hearing shall be recorded at the department's expense. In addition, the department shall make a written record of:

- (1) the style of the proceedings;
- (2) the nature of the proceedings including copies of the affidavit of violation, the order of denial, suspension, or revocation, and the notice of hearing;
- (3) the place, date, and time of the hearing and all continuances or recesses of the hearing;
- (4) the appearance or nonappearance of the respondent;
- (5) if the respondent appears with an attorney or other representative, the name and address of the attorney or representative;
- (6) all evidence and testimony and a copy of all exhibits introduced into evidence;
- (7) the findings of fact, conclusions of law, and recommended decision of the hearing examiner; and
- (8) the decision of the secretary.

I. Rights of applicant, instructor applicant, approved instructor, or licensee. The respondent has the right to:

- (1) attend the hearing;
- (2) file evidence in open hearing;
- (3) recuse a hearing examiner for cause;
- (4) be assisted or represented by an attorney or other person at his own expense; and
- (5) call, examine and cross-examine witnesses.

J. Stipulation. The respondent shall stipulate in writing on a form prescribed by the department that the hearing examiner shall be released from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the hearing. Failure to so stipulate shall result in termination of the hearing and continuation of the order issued by the department.

K. Deliberation. At the close of the hearing, the hearing examiner shall review and consider the entire record, prepare findings of fact, conclusions of law, and a recommended decision, and submit them to the secretary not later than 20 calendar days after the close of the hearing. The hearing examiner shall make a finding on each ground for denial, suspension, or revocation alleged. The recommended decision shall be based upon substantial, competent, and relevant evidence and testimony appearing in the record of hearing.

L. Final order. Within 20 calendar days of receipt of the recommended decision, the secretary shall review the record of the hearing and issue a final order affirming the denial of an application for, or suspension or revocation of, a license or permit or reversing the denial, suspension, or revocation and authorizing issuance or reinstatement of a license or permit. The department shall mail a copy of the final order to the respondent. The final order shall be based upon substantial, competent, and relevant evidence and testimony appearing in the record of hearing.

M. Appeals. A respondent adversely affected by a final order of the department may file a petition for a writ of certiorari in the district court in the county where the respondent resides within 30 days of the date the final order was postmarked. The appellant shall bear the costs of the appeal.

[10.8.2.26 NMAC - N, 11-26-03]

10.8.2.27 PROHIBITING THE CARRYING OF CONCEALED HANDGUNS ON PRIVATE PROPERTY: Pursuant to Subsection C of NMSA 1978 Section 29-19-12, any person lawfully in possession of private property may prohibit the carrying of concealed handguns on such private property by posting notice in accordance with NMSA 1978 Section 30-14-6 or by verbally notifying persons entering upon the property.

[10.8.2.27 NMAC - N, 11-26-03]

10.8.2.28 DEPARTMENTAL IMMUNITY: The department, or any employee of the department, shall not be criminally or civilly liable for acts:

- A. performed by the department or employee in good faith based on information available to the department or employee at the time the act was performed;
- B. committed by a licensee unless the department or employee had actual knowledge at the time the license was issued that the licensee was prohibited by law from being issued a license; or
- C. committed by a person approved by the department or employee to offer a firearms training

course.

[10.8.2.28 NMAC - N, 11-26-03]

10.8.2.29 RECIPROCITY: The secretary or his designee shall have discretionary authority to afford transfer, recognition or reciprocity to a concealed handgun license issued by another state, transfer, recognition or reciprocity.

- A.** Transfer, recognition or reciprocity may be granted if the other state:
- (1) issues a license or permit with an expiration date printed on the license or permit;
 - (2) is available to verify the license or permit status for law enforcement purposes within three business days of request;
 - (3) has disqualification, suspension and revocation requirements for a concealed handgun license or permit;
 - (4) requires that an applicant for a concealed handgun license or permit submit to a national criminal history records check;
 - (5) requires that an applicant not be prohibited from possessing firearms pursuant to federal or state law; and
 - (6) requires that an applicant satisfactorily complete a firearms safety program that covers deadly force issues, weapons care and maintenance, safe handling and storage of firearms and marksmanship.

B. Each state which the department has afforded transfer, recognition or reciprocity shall be listed on the department's web page.

[10.8.2.29 NMAC - N, 11-30-05]

10.8.2.30 CURRENT LAW ENFORCEMENT OFFICERS:

A. Any current law enforcement officer residing in New Mexico shall be allowed to obtain a five year concealed handgun carry license by submitting:

- (1) by submitting all forms as required in section 10.8.2.11 of these rules; and
- (2) a letter from their agency head verifying that the applicant is employed in good standing and is qualified under 29-19-4 of the Act; and
- (3) a copy of their law enforcement certification and number; and
- (4) a copy of their latest firearms qualification score with category and caliber designated, signed and dated by the authorized firearms instructor conducting the course.

B. An application may be denied if:

- (1) the head of the law enforcement agency employing the officer requests in writing that a license not be issued and supplies sufficient information to enable the department to determine if the denial should be granted; or
- (2) if the applicant is pending criminal charges or serious administrative allegations involving their conduct as a law enforcement officer.

C. The agency and applicant will be notified in writing of the departments' decision. If denied, the applicant may follow the appeal process.

D. The applicants' agency will be notified of any disqualifying information that may become known during the background check.

E. A license issued under this section must be turned in when the officer is no longer employed by a law enforcement agency.

[10.8.2.30 NMAC - N, 11-30-05]

10.8.2.31 RETIRED LAW ENFORCEMENT OFFICERS: Any retired law enforcement officer shall be allowed to obtain a five year concealed handgun carry license under the following requirements:

- A.** by submitting all forms as required in section 10.8.2.11 of these rules; and
- B.** is a resident of the state of New Mexico; and
- C.** has retired from a law enforcement agency after a minimum of 15 years employment, unless the retirement was due to a job related disability; if the 15 years is with more than one agency, the applicant must obtain a letter from each agency verifying such employment; and
- D.** submits a letter from the agency they retired from which indicates they retired in good standing with the effective date of retirement; and

- E.** submits a copy of their last firearms qualification score indicating category and caliber designation and is dated and signed by the departments firearms instructor; if the officer has been retired longer than ten years at the time of the application, the officer must take a firearms course as per the act; and
- F.** submits a copy of their law enforcement certification and number; and
- G.** qualifies and adheres to the provisions of the act and these rules.

[10.8.2.31 NMAC - N, 11-30-05]

HISTORY OF 10.8.2 NMAC:

History of repealed material.

10.8.2 NMAC, Carrying Concealed Handguns, filed on 9-4-01, was removed from the New Mexico Administrative Code pursuant to Supreme Court Opinion 2002 NMSC-017.